

REMARKS

This is a full and complete response to the Office action dated September 26, 2006.

All comments and remarks of record are herein incorporated by reference. Applicants respectfully traverse these rejections and all comments made in the Office action. Nevertheless, in an effort to expedite prosecution, Applicants provide the following remarks regarding the cited references.

DISPOSITION OF CLAIMS

Claims 1-29 are pending in the present application. Claims 15 and 29 have been amended. Claims 30-41 have been canceled. No new matter has been added.

REMARKS REGARDING RESTRICTION REQUIREMENT

Applicants wish to thank the Examiner for withdrawing the restriction requirement, as indicated by the Examiner on page 2 of the Office action. However, the Examiner has indicated that claims 6-8 are subject to restriction and/or election requirement and are withdrawn. No explanation or arguments are made by the Examiner as to why such claims are restricted or withdrawn. In absence of any explanation or arguments, Applications hereby respectfully traverse any restriction requirement that may or may not be issued.

REMARKS REGARDING REJECTION UNDER 35 USC §112

Claims 1-41 stand rejected under 35 USC §112, first paragraph, as allegedly failing to comply with the enablement requirement. Applicants respectfully traverse this rejection.

The Examiner alleges that the claims contain subject which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention with respect to

Lactobacillus acidophilus microorganisms selected from the group consisting of M35, LA45, LA51, L411, NPC 747, NPC 750, D3, and L7.

According to 37 CFR §1.802, biological material need not be deposited if it is known and readily available to the public or can be made or isolated without undue experimentation. Furthermore, once deposited in a depository, complying with regulation 37 CFR §§1.801-1.809, the biological material will be considered to be readily available. *See* 37 CFR §1.802.

Applicants respectfully assert that the Applicants have made deposits of the above mentioned microorganisms with a depository under the Budapest Treaty and which satisfy the regulations 37 CFR §§1.801-1.809, including in 37 CFR §1.803(a)(1) which states that a deposit shall be recognized for the purposes of these regulation if made in any international depository authority (IDA) as established under the Budapest Treaty. Applicants provide with this paper three forms indicating deposits made with the ATCC on May 26, 2005, June 30, 2005, and March 8, 2006 as evidence of such deposits.

Furthermore, Applicants have deleted NPC 747 and NPC 750 from claims 15, 29, and 38, however this in no way narrows the instant claims, as Applicants respectfully assert that LA51 can be referred to as NPC 747, and M35 can be referred to as NPC 750, as they are the same strain of microorganism, therefore making them identical. As a consequence of their identity, additional deposits need not be made for said microorganisms.

Applicants respectfully assert that, especially in view of the deposits made, that the biological materials recited in the claims are readily available, and thus respectfully request that the 35 USC §112 rejection be withdrawn.

REMARKS REGARDING REJECTION UNDER 35 USC §102(e)

Claims 1-5, 9-15, and 16-41 stand rejected under 35 USC §102(e) as allegedly anticipated by **Garner et al.**, US 7,063,836, (“**Garner**”). Applicants respectfully traverse this rejection.

The Examiner recites various passages from **Garner** alleging that this reference discloses each and every element as claimed as noted by the bolded portions in the Office action. Applicants respectfully disagree.

Applicants respectfully note that with respect to the processing and sale of meat products, it is possible that such can be contaminated at any step of the process post slaughter. Because of this, it is necessary to take preventative measures that ensure E.coli 0157:H7, or other pathogens, are reduced or eliminated from meat products. One such method is that according the presently claimed invention.

The claimed invention recites that a meat product or carcass is contacted with at least one lactic acid producing microorganism. Applicants wish to note that meat products or animal carcasses are at risk to bacterial contaminations in the processing environment. By such claimed method, a reduction in pathogen content or concentration in a meat product or carcass is achieved. *See* Application, paragraph [0011]. Applicants also respectfully note that with respect to a meat product or carcass, the animal is no longer living.

However, another strategy for control of pathogens is disclosed in **Garner**. **Garner** is directed to reducing or eliminating the growth of enteropathogens such as E. coli 0157:H7 for health benefits to the animals, and also for animals prior to harvest. *See Garner*, col. 2, lines 19-28. Applicants wish to note that Enteropathogens are pathogens that cause disease to the intestinal tract. *See Garner*, col. 1, lines 55-56. By reducing or eliminating such enteropathogens in food animals, consumers of such food products will be better protected from the risk of consuming such pathogens. *See Garner*, col. 2, lines 26-29.

The method disclosed in **Garner** involves administering a therapeutically effective amount of lactic acid producing bacterium to a ruminant. *See Garner*, claim 1; *see also*, col. 6, lines 18-22. Applicants wish to note that such ruminant would be alive when administered the bacterium. In view of this, Applicants respectfully assert that **Garner** does not disclose the claimed invention.

The mere fact that **Garner** mentions that an effective amount of lactobacillus acidophilus can be used does not disclose or suggest the invention. This is because the

therapeutic amounts of lactobacillus are mentioned in the context of their being administered to ruminants and NOT their application to meat products. For similar reasons, the mere fact **Garner** mentions “carcass” does not disclose or suggest the claimed invention. This is because “carcass” is recited in the context of producing certain characteristics by means of an animal’s diet, and does not disclose or suggest contacting such with lactic acid producing microorganisms.

The recited passages and bolded portions as cited by the Examiner clearly do nothing to disclose suggest that meat products should be contacted with a lactic acid producing microorganisms. Therefore, Applicants respectfully assert **Garner** does not anticipate the instant claims, and request that the 35 USC §102(e) rejection be withdrawn.

REMARKS REGARDING REJECTION UNDER 35 USC §103(a)

Claims 1-5, 9-15, and 16-41 stand rejected under 35 USC §103(a) as allegedly obvious over **Garner**. Applicants respectfully traverse this rejection.

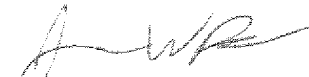
Nevertheless, pursuant to 35 USC §103(c), **Garner** is disqualified as a reference for use under 35 USC §103(a). Applicants respectfully assert that the instant application, Application No. 10/707,674, and **Garner**, at the time the invention of the current application was made, were owned by or subject to an obligation of assignment by the named inventors to Nutrition Physiology Corporation. Therefore, Applicants respectfully request the 35 USC §103(a) rejection be withdrawn.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account No. 14.1437. Please credit any excess fees to such deposit account.

Conclusion

Having addressed all issues set out in the Office action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request that the claims be allowed.

Respectfully submitted,
NOVAK DRUCE & QUIGG, LLP


Jason W. Bryan
Reg. No. 51,505

1000 Louisiana Ave
53rd floor
Houston, Texas 77002
T: 713-571-3400
F: 713-456-2836